



## **PROPOSED INVERCARGILL CITY DISTRICT PLAN**

### **Decision No. 2**

#### **Demolition or Removal Activities**

##### **Hearings Committee**

Councillor Darren Ludlow (Chair)

Councillor Neil Boniface

Councillor Graham Sycamore

Keith Hovell

11 October 2016

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## **INTRODUCTION**

We have been appointed by the Invercargill City Council to consider and issue decisions on the submissions lodged to the Proposed Invercargill City District Plan. In this decision we consider the submissions lodged in relation to Demolition or Removal Activities.

The Resource Management Act 1991 sets out various matters that impact on our considerations and deliberations. The key provisions are sections 5 - 8, 32, 75 and 76 of the Act, and the Second Part of the First Schedule to the Act. The Section 42A Report prepared for the Committee considered these matters in detail and we have had regard to those matters. Where the statutory provisions are of particular significance we have referred to them within this Decision.

In this Decision, the following meanings apply:

"The Council" means the Invercargill City Council.

"FS" means Further Submission.

"Further Submitter" means a person or organisation supporting or opposing a submission to the Proposed Plan.

"Heritage NZ" means Heritage New Zealand, formerly known as the NZ Historic Places Trust.

"Hearings Committee" or "Committee" means the District Plan Hearings Committee established by the Council under the Local Government Act.

"NZAS" means New Zealand Aluminium Smelters Ltd.

"The Oil Companies" means Z Energy Ltd, BP Oil NZ Ltd and Mobil Oil NZ Ltd.

"Operative Plan" or "Operative District Plan" means the Invercargill City District Plan 2005.

"Proposed Plan" or "Proposed District Plan" means the Proposed Invercargill City District Plan 2013.

"RMA" means the Resource Management Act 1991.

"Submitter" means a person or body lodging a submission to the Proposed Plan.

At the commencement of the hearings, Crs Boniface and Ludlow declared an interest as Directors of PowerNet Limited, Cr Sycamore declared an interest as a Director of Invercargill City Holdings Limited and Commissioner Hovell declared a conflict of interest in relation to submissions lodged by Cunningham Properties Limited. The Councillors and Commissioner took no part in deliberations in relation to the submissions of the submitters referred to.

## **THE HEARING TO CONSIDER SUBMISSIONS TO THE PROPOSED PLAN**

The hearing to consider the submissions lodged to the matters set out in this decision was held in the Council Chambers on 5 May 2014.

### **Section 42A Report**

The Committee received a report from Liz Devery, Senior Policy Planner with the Invercargill City Council. In her report, Mrs Devery highlighted that the focus of the

Proposed Plan is to ensure that demolition or removal activities are carried out in a safe and timely manner and that the property is left in a clean and tidy state with any waste disposed of responsibly. The Proposed Plan provisions also state that the Council policy is to encourage landowners to consider alternatives to demolition and removal; and to encourage landowners to actively utilise their sites post-demolition.

Mrs Devery noted that six submissions were lodged on this issue. She generally accepted the relief sought by submitters, considering that amendments would make the demolition and removal consent process more transparent and the provisions user-friendly. She also considered that the amendments recommended will be consistent with the Objectives in the Proposed Plan and meet the requirements of the RMA.

In response to questions from the Committee, Mrs Devery agreed that her recommendation to amend Rule 3.4.2(E) should be amended to remove the words "if required" and "to complete" in order to clarify the provision. She also agreed that there should be an ability to utilise the bond to remedy adverse effects on infrastructure of providers other than the Council, for example, the New Zealand Transport Agency. Consequential to that Mrs Devery accepted that 3.4.2(C) should be deleted.

### **Submitters Attending the Hearing**

No submitters attended the hearing.

### **Material Tabled at the Hearing**

#### New Zealand Smelters Limited

Katherine Viskovic of Chapman Tripp, advised on behalf of New Zealand Aluminium Smelters Ltd that Smelter Zone Policy 11 was supported, as was the recommendation to retain the policy.

#### New Zealand Transport Agency

Tony MacColl, Senior Planning Adviser at the NZ Transport Agency, requested that the bond referred to in Rule 3.4.2(E) be able to be used for remedial work on both State Highways and local roads. He supported the recommendation in Section 5.3.3 of the Planner's Report which promotes the clarification of what the bond can be used for. However, he submitted that it is not clear whether the proposed amendment refers to Council infrastructure only, or includes both Council infrastructure and infrastructure controlled by other authorities. Mr MacColl requested that the provision refers to "remedial work to Council or other infrastructure".

#### South Port

Kirsty O'Sullivan of Mitchell Partnerships Limited, advised on behalf of South Port that Seaport Zone Policy 10 was supported, as was the recommendation to retain the policy.

#### The Oil Companies

Karen Blair of Burton Consultants, on behalf of the Oil Companies, advised support for the recommendation to accept their further submission (FS 24/11) to Submission 24.57 by South Port to retain 2.42.3 Policy 10.

#### Heritage NZ

Jane O'Dea, Heritage Advisor (Planning) of Heritage NZ, advised support for the recommendations relevant to the submissions lodged.

## **MATTERS REQUIRING PARTICULAR CONSIDERATION**

### **Bonds**

Submission 69.17 ICC Roading Manager sought clarification on how bonds would be used with reference being included to remedial work where infrastructure is damaged. This was supported by FS28.8 NZ Transport Agency noting that State Highways were part of the local infrastructure.

The Committee agreed with the staff recommendation to include an addition in response to the initial submission, although following discussion with Mrs Devery at the hearing concluded that a minor change was appropriate to the recommended text.

With regard to the request from the NZ Transport Agency to include reference to any remedial work required on a State Highway, the Committee accepted that a valid point had been made, but preferred to deal with the matter in a generic way. That was best achieved by accepting the recommendation on this matter in the Section 42A Report and deleting reference to "Mitigation of any effects on Council infrastructure".

FS39.18 Environment Southland also supported the original submission, requesting that the Council include provisions for waste tracking and best practice guidelines for demolition and removal activities. The Committee agreed with Mrs Devery in her Section 42A Report, that these matters extended beyond the original submission. The Committee also noted that Environment Southland did not present any additional material at the hearing opposing the comments and recommendation in the report.

## **SECTION 32 MATTERS**

### **Requirements**

The Committee was advised by Mrs Devery that Section 32 of the RMA establishes the framework for assessing objectives, policies and rules proposed in a Plan, and that a Report was released at the time of notification of the Proposed Plan in compliance with those provisions. The Committee was also advised that Section 32AA of the RMA requires a further evaluation to be released with decisions outlining the costs and benefits of any amendments made after the Proposed Plan was notified, with the detail of the assessment corresponding with the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the changes made to the Proposed Plan.

As the Committee understands its obligations, it is required to:

- (i) Assess any changes made to objectives to determine whether they are the most appropriate way to achieve the purpose of the RMA.
- (ii) Examine any changes made to the policies and rules to determine whether they are the most appropriate way to achieve the objectives of the Proposed Plan. This includes:
  - Identifying the costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions (including effects on employment and economic growth)
  - Identifying other reasonably practicable options for achieving the objectives; and

- Assessing the efficiency and effectiveness of the provisions in achieving the objectives.

The Committee however, is not required to assess in accordance with Section 32 of the RMA any changes to the issues and/or explanatory text of provisions.

### **Assessment**

This decision amends the layout of several provisions and makes minor changes to others and their explanations. The Committee's decision does not introduce any changes that have not been assessed in the Section 42A Report that are more than minor. Mrs Devery in her Section 42A Report advised the Committee as follows:

*Due to the minor nature of the recommended changes it is not necessary or practical to evaluate in detail or quantify the economic, social, cultural, environmental and employment effects of the changes. It is sufficient to state that a more easily interpretable plan can aid efficient and effective regulation, which can result in positive effects with respect to these matters. For this reason, the recommended approaches are considered to be preferable to the alternatives of adopting the provisions as notified and those alternatives proposed by submitters for which recommendations differ.*

The Committee agrees with that approach and adopts it.

Dated at Invercargill this 11<sup>th</sup> day of October 2016



Councillor Darren Ludlow (Chair)



Councillor Neil Boniface



Councillor Graham Sycamore



Keith Hovell



## APPENDIX 1 - DECISIONS BY SUBMISSION

SUBMISSION	DECISION
<b>BUSINESS ZONE POLICIES – Demolition or Removal</b>	
<p><b>65.51, 65.52, 65.66 and 65.67 - ICC Environmental and Planning Services</b>            The submitter supports 2.22.3 Policy 15 and 2.23.3 Policy 13 in part. The submitter considers that each policy reads as three different policies and should be tidied up. Split the policies in three.</p> <p>The submitter also supports the explanations in part but considers that they do not cover (B) relating to the active reutilisation of the sites post-demolition. Expand the explanation to ensure that it covers all three parts of the policy, not just (A).</p> <p><b>65. 65 - ICC Environmental and Planning Services</b>            The submitter questions why 2.25.3 Policy 11 is different to that in the Business 3 Zone, particularly why sites in this zone should be utilised for car parking or open space</p>	<p><b>Decision 2/1</b>            This submission is accepted.</p> <p><b>Amendments to District Plan</b>            Amending 2.22.3 Policy 15, 2.23.3 Policy 13, 2.24.3 Policy 14 and 2.25.3 Policy 11 to read as follows:</p> <p>Demolition or Removal Activities</p> <p>(A) To encourage owners to consider the restoration, and adaptive re-use of buildings in preference to demolition.</p> <p>(B) To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.</p> <p>(C) To encourage active utilisation of sites post-demolition by encouraging their prompt redevelopment and in the meantime encouraging use of the site for such activities as car parking or public open space.</p> <p>Explanation: It is good practice to consider the restoration and adaptive re-use of any building or structure as part of the redevelopment process, in order to identify opportunities to reduce waste entering the waste stream and to ensure best use of existing resources and infrastructure.</p> <p>Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.</p> <p>Vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. Where a site is to be left empty post-demolition, adaptive ways to use the space and opportunities for active reutilisation of the sites in the interim are to be encouraged.</p> <p><b>Reasons</b></p> <ol style="list-style-type: none"> <li>1. Reformatting the policies will ensure that all three policy points are readily identifiable.</li> <li>2. Expanding the explanation will ensure the policy is clear as</li> </ol>

## APPENDIX 1 - DECISIONS BY SUBMISSION

SUBMISSION	DECISION
	<p>to its intent.</p> <p>3. There is a need for consistency of a policy applying to demolition activities across all Business Zones.</p>
<b>SEAPORT ZONE</b> <b>2.42.3 Policy 10 Demolition or Removal Activities</b>	
<p><b>24.57 - South Port NZ Ltd</b>                      The submitter supports the policy as it believes that such activities sometimes occur within the Seaport area and that it is appropriate that demolition or removal activities are managed appropriately. Retain</p> <p><b>FS24.11 - Z Energy Ltd, BP Oil NZ Ltd and Mobil Oil NZ Ltd</b> support Submission 24.57 and considers it appropriate to manage potential nuisance effects associated with demolition activities. Retain policy 10</p>	<p><b>Decision 2/2</b>                      This submission is accepted.</p> <p><b>Amendments to District Plan</b>                      None required.</p> <p><b>Reason</b>                      The submitter and further submitter support Policy 10 and no change is sought to it.</p>
<b>SMELTER ZONE</b> <b>2.43.3 Policy 11 Demolition or Removal Activities</b>	
<p><b>71.42 - NZAS Ltd</b>                      The submitter supports the policy's recognition of the temporary effects that demolition activities can have on amenity values. Retain Policy 11</p>	<p><b>Decision 2/3</b>                      This submission is accepted.</p> <p><b>Amendments to District Plan</b>                      None required.</p> <p><b>Reason</b>                      The submitter and further submitter support Policy 11 and no change is sought to it.</p>

## APPENDIX 1 - DECISIONS BY SUBMISSION

SUBMISSION	DECISION
<b>RULE 3.4 DEMOLITION OR REMOVAL ACTIVITIES</b>	
<p><b>69.17 - ICC Roading Manager</b>                      The submitter considers that it would be appropriate to clarify that the bond taken can also include likely mitigation costs needed where remedial work is likely to be required to infrastructure damaged or affected by the consent.</p> <p><u>Decision Sought:</u> Amend 3.4.2(E) to clarify that the bond taken can also include likely mitigation costs needed where remedial work is likely to be required to infrastructure damaged or affected by the consent.</p> <p><b>FS28.8 - NZ Transport Agency support Submission 69.17</b>                      The further submitter comments that the Council or infrastructure provider should not have to pay for works that are required to mitigate effects caused by the consent holder.</p> <p><u>Decision Sought:</u> Amend 3.4.2(E) as sought in Submission 69.17</p> <p><b>FS39.18 - Environment Southland support Submission 69.17</b> agreeing that bonds are appropriate to cover the potential costs of any remediation work required, including the removal of sediment and other material from stormwater sumps and drains. They comment that every effort should be made to minimise the chance of environmental, human health, infrastructure damage or adverse effects occurring. They believe that matters over which the Council shall exercise its control should be extended to include waste tracking and the implementation of best practice guidelines for the screening and sorting of demolition waste and its ultimate disposal. They consider that this could be achieved by the addition of a new criteria or bolstering 3.4.2 (B), (C), (F) and (H).</p> <p><u>Decision Sought:</u> Accept Submission 69.17</p>	<p><b>Decision 2/4</b>                      This submission is accepted.</p> <p><b>Amendments to District Plan</b></p> <ol style="list-style-type: none"> <li>1. Amend Rule 3.4.2(E) to read as follows:                             <ol style="list-style-type: none"> <li>(E) The imposition of a bond (<del>if required</del>) to ensure the completion of rehabilitation, <u>including any necessary remedial work to infrastructure damaged or affected as a result of the demolition or removal activity.</u> The value of the bond shall be calculated at up to 1.5 times the value of the work required to <del>complete rehabilitation of</del> <u>rehabilitate</u> the site.</li> </ol> </li> <li>2. Delete Rule 3.4.2(C) with consequential renumbering.</li> </ol> <p><b>Reasons</b></p> <ol style="list-style-type: none"> <li>1. The amendment provides clarification of process.</li> <li>2. As remedial works may apply to organisations other than the Council, provision 3.4.2(C) is not required.</li> <li>3. Additional items sought by Environment Southland go beyond the scope of the original submission.</li> </ol>

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## APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

### SECTION TWO – ISSUES, OBJECTIVES AND POLICIES

#### 2.22 Business 1 (Central Business District) Zone

##### 2.22.3 Policies

###### Policy 15 Demolition or removal activities<sup>1</sup>

(A) To encourage owners to consider the restoration, and adaptive re-use of buildings in preference to demolition.

(AB) To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.

(BC) To encourage active utilisation of sites post-demolition by encouraging their prompt redevelopment and in the meantime encouraging use of the site for such activities as car parking or public open space.

**Explanation:** *It is good practice to consider the restoration and adaptive re-use of any building or structure as part of the redevelopment process, in order to identify opportunities to reduce waste entering the waste stream and to ensure best use of existing resources and infrastructure.*

*Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.*

*Vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. Where a site is to be left empty post-demolition, adaptive ways to use the space and opportunities for active reutilisation of the sites in the interim are to be encouraged.*

#### 2.23 Business 2 (Suburban Shopping and Business) Zone

##### 2.23.3 Policies

###### Policy 13 Demolition or removal activities<sup>2</sup>

(A) To encourage owners to consider the restoration, and adaptive re-use of buildings in preference to demolition.

(AB) To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.

(BC) To encourage active utilisation of sites post-demolition by encouraging their prompt redevelopment and in the meantime encouraging use of the site for such activities as car parking or public open space.

**Explanation:** *It is good practice to consider the restoration and adaptive re-use of any building or structure as part of the redevelopment process, in order to identify opportunities to reduce waste entering the waste stream and to ensure best use of existing resources and infrastructure.*

*Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.*

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<sup>1</sup> Decision 2/1

<sup>2</sup> Decision 2/1

Note: Underline indicates additions, strikethrough indicates deletions.

## APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

Vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. Where a site is to be left empty post-demolition, adaptive ways to use the space and opportunities for active reutilisation of the sites in the interim are to be encouraged

### 2.24 Business 3 (Specialist Commercial) Zone

#### 2.24.3 Policies

##### Policy 14 Demolition or removal activities<sup>3</sup>

(A) To encourage owners to consider the restoration, and adaptive re-use of buildings in preference to demolition.

(AB) To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.

(BC) To encourage active utilisation of sites post-demolition by encouraging their prompt redevelopment and in the meantime encouraging use of the site for such activities as car parking or public open space.

**Explanation:** It is good practice to consider the restoration and adaptive re-use of any building or structure as part of the redevelopment process, in order to identify opportunities to reduce waste entering the waste stream and to ensure best use of existing resources and infrastructure.

Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.

Vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. Where a site is to be left empty post-demolition, adaptive ways to use the space and opportunities for active reutilisation of the sites in the interim are to be encouraged.

### 2.25 Business 4 (Neighbourhood Shop) Zone

#### 2.25.3 Policies

##### Policy 11 Demolition or removal activities<sup>4</sup>

(A) To encourage owners to consider the restoration, and adaptive re-use of buildings in preference to demolition.

(AB) To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.

(BC) To encourage active utilisation of sites post-demolition by encouraging their prompt redevelopment, and in the meantime encouraging use of the site for such activities as car parking or public open space.

**Explanation:** It is good practice to consider the restoration and adaptive re-use of any building or structure as part of the redevelopment process, in order to identify opportunities to reduce waste entering the waste stream and to ensure best use of existing resources and infrastructure.

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<sup>3</sup> Decision 2/1

<sup>4</sup> Decision 2/1

Note: Underline indicates additions, strikethrough indicates deletions.

## APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

*Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.*

*Vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. Where a site is to be left empty post-demolition, adaptive ways to use the space and opportunities for active reutilisation of the sites in the interim are to be encouraged.*

### 2.27 Hospital Zone

#### 2.27.3 Policies

**Policy 10** **Demolition or Removal Activities<sup>5</sup>**: To manage the adverse effects of demolition on amenity values by ensuring the clean-up, screening and maintenance of sites.

***Explanation:** Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner with minimal inconvenience to the public in general.*

### 2.29 Industrial 1 (Light) Zone

#### 2.29.3 Policies

**Policy 13** **Demolition ~~and~~ or Removal Activities<sup>6</sup>**: To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.

***Explanation:** Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner with minimal inconvenience to the public in general.*

### 2.31 Industrial 2 (Urban) Zone

#### 2.31.3 Policies

**Policy 10** **Demolition ~~and~~ or Removal Activities<sup>7</sup>**: To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.

***Explanation:** Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner with minimal inconvenience to the public in general.*

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<sup>5</sup> Minor change pursuant to First Schedule Clause 16

<sup>6</sup> Minor change pursuant to First Schedule Clause 16

<sup>7</sup> Minor change pursuant to First Schedule Clause 16

Note: Underline indicates additions, strikethrough indicates deletions.

## APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

### 2.32 Industrial 3 (Large) Zone

#### 2.32.3 Policies

**Policy 11 Demolition ~~and~~ or Removal activities<sup>8</sup>:** To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.

***Explanation:** Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner with minimal inconvenience to the public in general.*

## SECTION THREE - RULES

### 3.4 Demolition or Removal Activities

**3.4.1** Unless Section 3.8 Heritage applies, it is a permitted activity to demolish or remove all buildings and structures with an area of less than:

- (A) 80 square metres in the Residential 1, Residential 1A Residential 2, Residential 3 and Otatara Zones.
- (B) 1,000 square metres in the Smelter Zone.
- (C) 120 square metres in other zones.

**3.4.2** Unless Section 3.8 Heritage applies, it is a controlled activity to demolish or remove buildings and structures with an area of:

- (A) 80 square metres or more in the Residential 1, Residential 1A, Residential 2, Residential 3 and Otatara Zones.
- (B) 1,000 square metres or more in the Smelter Zone.
- (C) 120 square metres or more in other zones.

The matters over which the Council shall exercise control are:

- (A) Screening mechanisms if needed.
- (B) Mitigation of the effects of any earthworks undertaken in association with the demolition.
- ~~(C) Mitigation of any effects on Council infrastructure.<sup>9</sup>~~

~~(D)~~ Site rehabilitation.

~~(E)~~ The imposition of a bond (if required) to ensure the completion of rehabilitation, including any necessary remedial work to infrastructure damaged or affected as a result of the demolition or removal activity. The value of the bond shall be calculated at up to 1.5 times the value of the work required to ~~complete rehabilitation of~~ rehabilitate the site.<sup>10</sup>

~~(F)~~ The ability to either recycle or to dispose of waste materials in an environmentally responsible manner.

~~(G)~~ The time needed to complete the demolition or removal.

<sup>8</sup> Minor change pursuant to First Schedule Clause 16

<sup>9</sup> Decision 2/4

<sup>10</sup> Decision 2/4

Note: Underline indicates additions, strikethrough indicates deletions.



## APPENDIX 2 - AMENDED DISTRICT PLAN PROVISIONS

(HG) The methods proposed for demolition and disposal or removal.

- 3.4.3** **Note:** Reference should be made to Section 3.8 Heritage of this Plan for rules relating to the activity status of demolition or removal activities of heritage buildings.

Note: Underline indicates additions, strikethrough indicates deletions.